

Atty. Dkt. No. 025636-0123

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 6, 7, 12 and 13 are currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-20 (20 claims) are now pending in this application.

The Office Action of September 11, 2003, and the references cited therein have been considered. In response to the rejections stated in the Office Action, the claims have been amended to clarify important distinctions over the cited prior art and to clarify any ambiguity cited by the Examiner, as explained below. As demonstrated, however, each of the rejections is believed overcome, with the application being placed in condition for allowance. Accordingly, reconsideration and allowance of this application is respectfully requested.

On page 2, paragraph 1 of the Office Action, the Examiner has withdrawn the restriction requirement and states that all claims have been examined. Applicant thanks the Examiner for this response.

On page 2, paragraph 2, the Examiner has rejected claims 6 and 12 under 35 U.S.C. §112, second paragraph. With regard to claim 6, Applicant has amended claim 6 to add the word "pad" after the word "cooler" in line 1. This amendment corrects an obvious typographical error.

With regard to claims 6 and 12, the Examiner believes that the last two lines of the respective claims are incorrect. In response, Applicant has amended claims 6 and 12 by deleting the word "inner" and substituting the word "outer" in front of the word "panel" in the

Atty. Dkt. No. 025636-0123

last line of each claim. Support for this amendment can be found in paragraph 0030 and Figure 3 of the present specification.

Applicant believes that the amended claims 6 and 12 particularly point out and distinctly claim the subject matter which Applicant regards as the invention and as disclosed in the application. It is respectfully requested that the Examiner reconsider and withdraw his rejection of claims 6 and 12 under 35 U.S.C. §112, second paragraph.

On page 3, paragraph 4 of the Office Action, the Examiner has rejected claims 1, 2, 7, 8 and 13-20 under 35 U.S.C. §102(b) as being "clearly anticipated by Anderson (USPN: 3,738,621)". The Examiner specifically cites Figure 2; Col. 4, lines 36-45 of Anderson.

Applicant respectfully traverses the Examiner's characterization of Anderson as "clearly anticipating" that which is disclosed and claimed in the present application.

Anderson discloses a roof top evaporative cooler for cooling the interior of vehicles. (See Col. 2, lines 47-49.) Anderson also requires a separate convex metal grid 44 to retain the media pad 38 within the cooler. (See Fig. 2 and Col. 4, lines 33-36.)

In contrast, Applicant specifically states that their "inner panel 24 retains the pad element 22 within the pad frame 16, thereby replacing the open wire frame pad retainer of prior art". (See present specification paragraph 0028 and Fig. 3 of the present specification.) Applicant has amended independent claims 1, 7 and 13 to indicate that the pad element 22 is held between the outer panel 18 and the inner panel 22 "without a separate pad retainer". Applicant submits that Anderson is an example of the prior art which the present specification improves upon by eliminating the convex metal grid 44 pad retainer required by Anderson. Accordingly, independent claims 1, 7 and 13, as amended, are not anticipated by Anderson. Likewise, claims 2-6, 8-12, and 14-15 which depend either directly or indirectly from their respective independent claims are therefore also not anticipated by Anderson. Accordingly, Applicant respectfully requests that the Examiner withdraw his rejection of claims 1, 2, 7, 8 and 13-20 under 35 U.S.C. §102(b).

Atty. Dkt. No. 025636-0123

On page 3, paragraph 6 of the Office Action, the Examiner has rejected claims 3-6, and 9-12, under 35 U.S.C. §103(a) as being unpatentable over Anderson taken together with any one of Mallet (USPN: 1,743,974), Cooper (USPN: 1,798,307) and Huntington (USPN: 3,791,102). The Examiner believes that Anderson substantially discloses Applicant's invention except for the outer panel including louvered openings that essentially mirror those provided by the inner panel. The Examiner also believes that each of the secondary cited prior art patents, when combined with the teaching of Anderson would have been obvious at the time of the invention to provide the outer (inlet) panel of Anderson with louvered openings, specifically having a mirror arrangement relative to the louvers of the inner panel to retain the majority of moisture in the pad.

Applicant submits that one ordinarily skilled in the would not look to Anderson, Mallet, Cooper or Huntington to provide that which is disclosed and claimed in the present invention. Applicant's comments with respect to Anderson above, are reiterated here. Specifically, Applicant points out that Anderson discloses and claims a vehicle roof top cooler. (Emphasis added.) With respect to the secondary references, as best understood, those references are for industrial or commercial treatments of gas.

As acknowledged by the Examiner, Anderson does not disclose or teach or suggest that the inlet and outlet openings be in a mirror arrangement to facilitate movement of air through the cooler and through the pad. Further, Anderson does not suggest or teach that the pad can be retained by an inner and outer panel of louvered openings to retain the pad element without an additional wire frame pad retainer. Cooper discloses louvered openings with the louvers angled in an upward direction as shown in Fig. 3. Mallet does not suggest or teach the inlet and outlet louvers are used to retain the filling R' in the receptacle. Huntington discloses inlet grills 13 and 14 and outlet grills 14 and 15 in a stacked bed arrangement but does not disclose or teach that the grills have louvered openings nor that they are aligned in a mirror arrangement. The Examiner cites Fig. 1 of Huntington which shows that the inlet and outlet grills are not aligned directly across from each other but actually suggest a dip in the gas flow as the gas moves through the interior of the beds. There is no teaching or suggestion in any of the references cited by the Examiner wherein an outer panel and an inner panel

Atty. Dkt. No. 025636-0123

define a pad space to hold the pad element without a wire frame pad retainer as disclosed and claimed in the present application.

Applicant submits that it is not enough to point out prior art references that disclose the same structure as claimed by the Applicant and assume that a resulting property, in this case, holding a pad between an inner and outer panel without a wire frame pad retainer, will be present in the prior art reference. Such inherency may not be established with probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. It has to be shown that the prior art contains a teaching, suggestion or motivation to provide, in this case, an arrangement where a pad element in the evaporative cooler is held in place to reduce entrainment of moisture without a wire frame pad retainer. (See present independent claims 1, 7 and 13.) Anderson, Mallet, Cooper or Huntington do not have such teaching or suggestion. (See *Crown Operations International Ltd. v. Solutia, Inc.*, 62 U.S.P.Q. 2d 1917 (CAFC 2002)).

Applicant submits that one ordinarily skilled in the art would not combine Anderson with any of Mallet, Cooper or Huntington. Further, even if Anderson and one of the three secondary references were combined, they would not produce that which is disclosed and claimed in the present application since Anderson does not suggest or teach the elimination of the wire frame pad retainer, Cooper shows louvers angled in an upward direction, Huntington does not show mirror aligned openings in the inlet and outlet as suggested by the Examiner and none of the three secondary references nor Anderson teach or suggest that the pad element in the evaporative cooler be retained between an inner and outer panel without a wire pad frame.

Additionally, there is no suggestion in the references as to how to combine the Anderson, Mallet, Cooper and Huntington devices. Combining the devices would require a substantial amount of reconstruction given the different configurations of the various devices, and specifically, since Anderson requires a vehicle roof top mounted evaporative cooler.

Applicant, therefore, respectfully submits that claims 3-6, 9-12 which depend either directly or indirectly from the amended independent claims are patentable over the cited

Atty. Dkt. No. 025636-0123

references and respectfully request that the Examiner withdraw his rejection of the claims under 35 U.S.C. §103(a).

Applicant has attempted to amend the claims to the extent necessary to distinguish them over the prior art, but with the intent of not limiting the scope of the invention protection afforded by the patent laws and these claims any further than absolutely necessary. It is respectfully submitted that each outstanding rejection has now been overcome, and that each claim is in condition for allowance. Reconsideration under 37 C.F.R. §1.111 and §1.112 is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Atty. Dkt. No. 025636-0123

Respectfully submitted,

Date 02-27-04

By James A. Wilke

FOLEY & LARDNER
777 East Wisconsin Avenue, Suite 3800
Milwaukee, Wisconsin 53202-5306
Telephone: (414) 297-5776
Facsimile: (414) 297-4900

James A. Wilke
Attorney for Applicant
Registration No. 34,279